

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No.376 of 1995

Date of decision 20.6.2007

Bir Chand and another	Versus	Appellants
Smt.Rami Devi		Respondent

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?¹ No.

For the appellants: Mr.Neeraj Kumar Sharma, Advocate, vice
 Mr.Jagish Vats, Advocate.

For the Respondents: Mr.Parneet Gupta, Advocate.

Rajiv Sharma,J.

 This Regular Second Appeal has been filed by the defendants-appellants against the judgments and decrees of the Courts below, whereby the suit filed by the plaintiff was decreed by the trial court and the appeal filed by the defendant was dismissed by the learned Addl. District Judge vide judgment dated 25.2.1995.

 The brief facts necessary for the disposal of the second appeal are that the respondent, hereinafter referred to as the plaintiff for convenience sake, had filed a suit for declaration and permanent injunction against the defendants-appellants to the effect that the plaintiff since the time of his ancestors had been using the disputed path uninterruptedly and unhampered to enter his house.

¹ Whether reporter of local papers are allowed to see the judgment ? No.

The trial court on the basis of the pleadings of the parties had framed the following issues:

1. Whether Shri Tek Chand is also the owner of the land on which the impugned house is situated along with the plaintiff? If so, its effect? O.P.D.
2. Whether deity Smt.Tripila Sunderi is a necessary parties to the suit? O.P.D.
3. Whether the residential 'Doggra' of the plaintiff is no more and the plaintiff is not residing there as alleged ? O.P.D.
4. Whether the suit is not maintainable as alleged in preliminary issues No.4 and 5? O.P.D.
5. Whether the house of the plaintiff is situated in Khasra No.719 and passage for that passes and is used by the plaintiff as alleged ? O.P.P.
6. Whether the defendant interferes in the passage as alleged ?
... O.P.P.
7. Relief.

The trial court on the basis of the pleadings of the parties and evidence led by them had decreed the suit of the plaintiff to the effect that he had a legitimate right to go through the pathway and the defendant was restrained from interfering or obstructing in any manner user of the path by the plaintiff. The trial court had further directed to remove the obstruction placed by the defendant as per operative portion of the judgment.

Feeling aggrieved by the judgment and decree of the trial court, the legal heirs of deceased defendant Thakru alias Thakar Dass preferred an appeal before the learned Additional District Judge, Kullu. The appellate court had framed the following points for determination:

1. Whether there exists on the spot a path way shown by letters KLO in the plan Ex.PW4/A leading from the village common path upto the house of the deceased plaintiff-respondent and that the deceased plaintiff-respondent or his legal representative had/has a right to use the same ?
2. Final order.

The point-wise findings recorded by the appellate court are as under :-

Point No.1 Yes.

Point No.2 The appeal is dismissed as per operative portion of the judgment.

The appeal was dismissed by the learned Additional District Judge on 25.2.1995. The second appeal has been filed by the legal heirs of deceased defendant Thakur alias Thakur Dass.

The second appeal was admitted by the Court on the following questions of law:

1. Whether it is not incumbent on the party who claimed the right of easement to first plead and then to prove it?
2. Whether both the courts below have travelled beyond the pleadings thereby granting the relief without there being any legal proof by ignoring the basic provisions of Code of Civil Procedure and Indian evidence Act ?
3. Whether the judgments of the courts below are based upon misreading of evidence?

I have heard the learned counsel for the parties and have also gone through the record carefully.

The substantial questions being interconnected are taken up together for deciding the appeal. The plaintiff had appeared as PW-1 and stated that an old 'Sharan' which was in dilapidated condition and after its demolition it was rebuilt exactly on the same location. PW-2 Dharu and PW-3 Balbir had supported the testimony of PW-1. PW-1 had also deposed that his house was connected by a path shown by letters 'BLK' which merged into a public path, but the same had been obstructed by the defendant by raising a construction. PW2 and PW-3 had categorically stated that the plaintiff had been using the disputed path to reach his house. They have also categorically stated that no other path was

available to the plaintiff to reach his premises. In the written statement in preliminary objection No.2 filed by the defendant, it is admitted that the land over which passage is claimed by the plaintiff did not belong to him as the same belongs to the deity Tripala Sundri. The plaintiff was only claiming the path through the abadi area. The defendant had no right to cause any hindrance or obstruction in the path. The defendant had not placed on record any document showing that the plaintiff had an alternative path to reach his house. The learned courts below on the basis of evidence led by the parties have correctly recorded the findings in accordance with law. Whether there was a path or not to reach the house of the plaintiff is a question of fact. The courts below on appreciation of evidence on record have correctly come to the conclusion that the plaintiff had no other path except the path in dispute.

In view of the detailed discussion above, in my opinion, there is no merit in this appeal, especially when no question of law much less a substantial question of law arises for determination in this appeal. Hence the present appeal is dismissed with no order as to costs.

June 20,2007(g)

(Rajiv Sharma), J.